STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1436

State of Minnesota,
Respondent,

vs.

Jeron Garding,
Appellant.

Filed September 5, 2023
Reversed
Frisch, Judge

Wright County District Court
File No. 86-CR-21-3812

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Brian A. Lutes, Wright County Attorney, Buffalo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Ted Sampsell-Jones, Assistant Public Defender, Tacota LeMuel (certified student attorney), St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court erred in denying his motion to suppress evidence discovered in his vehicle because law enforcement lacked the necessary

reasonable, articulable suspicion to conduct a drug-dog sniff. Because the objective facts do not establish reasonable, articulable suspicion to infer that drugs were in the vehicle, we reverse.

FACTS

This case arises from appellant Jeron Garding's challenge to the district court's pretrial order denying his motion to suppress evidence discovered in a vehicle he was driving. At the suppression hearing, the district court received testimony from Trooper Jacob Bredsten, a photo taken during the search of the vehicle, and Trooper Bredsten's squad-car video and screenshots from that squad-car video. A summary of the evidence at the suppression hearing follows.

On August 10, 2021, Trooper Bredsten was monitoring a gas station with a connected restaurant off of Interstate 94 (I-94) in Hasty in Wright County. Trooper Bredsten was participating in "a high visibility saturation" operation in Clearwater related to drug, sex, and weapons trafficking occurring near I-94, Highway 24, and Highway 10.

Around 8:30 p.m., Trooper Bredsten focused his attention on a vehicle that was parked away from the gas pumps and the general business at the gas station. The vehicle was parked near other vehicles, but no other vehicles in the area appeared to be occupied. During his surveillance, Trooper Bredsten saw two occupants of the vehicle, a male (later identified as Garding) in the driver's seat and a female in the passenger seat.

Trooper Bredsten checked the vehicle registration and discovered that the vehicle was registered to a male in his 60s living in Fergus Falls. Trooper Bredsten drove his squad

car around the front of the vehicle and noted that both occupants appeared younger than the listed age of the registered owner.

Trooper Bredsten continued driving by the vehicle but remained nearby for observation. The occupants exited the vehicle, and Trooper Bredsten watched as Garding began to "thorough[ly]" clean the vehicle, including reaching under a seat and around the door. Garding placed items in a plastic bag. Trooper Bredsten did not see any drug paraphernalia and instead saw what appeared to be cups and a Styrofoam container. Trooper Bredsten testified that he "was confident it was trash." Trooper Bredsten watched the passenger go into the gas station without a purse or wallet and then return to the vehicle without appearing to have purchased anything.

Approximately 15 minutes after Trooper Bredsten began surveilling the vehicle, he activated his squad-car camera and approached the vehicle. Trooper Bredsten parked his squad car behind and to the left of the driver's side of the vehicle so that he was nearby but not blocking the vehicle from moving. Garding was standing at the driver's side door holding the white plastic bag filled with items, and Trooper Bredsten testified that it appeared to be the same bag of trash he observed earlier. Trooper Bredsten exited his squad car. Garding closed the driver's side door and moved toward the trunk. Trooper Bredsten greeted Garding while Garding placed the bag of trash in the trunk. Trooper Bredsten asked if everything was alright with the vehicle. Garding responded that everything was fine and volunteered that they had stopped and that he was cleaning the vehicle. Garding then walked to the gas station. Trooper Bredsten did not ask Garding additional questions or stop or follow Garding to the gas station.

Trooper Bredsten approached the front driver's side of the vehicle and spoke to the passenger through a partially open window. Trooper Bredsten asked the passenger how she was doing and if everything was all right. The passenger replied that she was "good." Trooper Bredsten asked the passenger who she was riding with, and she replied that she was with her boyfriend. She also told Trooper Bredsten that they were traveling from the Twin Cities.

Trooper Bredsten observed that the passenger appeared to have scabbed marks on her face, bruising on her arms and legs, and poor dental hygiene. Trooper Bredsten testified that, in his experience, physical characteristics such as these are consistent with signs of "prolonged" drug use. Trooper Bredsten expressed concern about the marks on her face, and the passenger attributed her appearance to poison ivy. He asked her if she used drugs, and she stated that she did not. Trooper Bredsten asked if she had used drugs recently because, in his experience, her marks were not consistent with poison ivy. She explained that she had scratched as a kid.

Trooper Bredsten asked the passenger to identify the driver several times, and the passenger eventually identified the driver as Garding. Trooper Bredsten further questioned the passenger and in response she stated that she had a purse but no identification. Trooper Bredsten asked if she had any outstanding warrants, and she replied that she thought she did.

Trooper Bredsten observed the interior of the vehicle. He saw a radar detector, loose paneling around the radio, and three radio heads in the backseat.[1] Trooper Bredsten also observed in the backseat a white plastic bag similar to a grocery or convenience store bag that was "tied up and rolled over." He observed that "the way that the contents of the bag were pushing out, it looked rocky," as if "there were numerous rocks on the inside." He testified that in his experience, a large amount of a controlled substance like methamphetamine can "break[] up like rocks" and "look like rocks from the outside within [a] bag." But when specifically asked if the substance in the bag that he observed in the vehicle "appear[ed] to be consistent with controlled substances," he answered only that "it looked rocky" and "like there were numerous rocks on the inside."

Approximately 13 minutes after Trooper Bredsten approached the vehicle, he went into the gas station to look for Garding. Gas station employees stated that Garding had watched through the window and then left through the doors on the opposite side of the store from where the vehicle was parked and headed toward the wood line. Trooper Bredsten testified that there is "no highway or really any houses or anything beyond [the wood line]."

Trooper Bredsten returned to the vehicle to conduct a drug-dog sniff. As Trooper Bredsten prepared to conduct the drug-dog sniff, he learned that Garding also had an outstanding arrest warrant. Trooper Bredsten led the drug dog around the exterior of the

[1] Trooper Bredsten testified that a "radio head" is the portion of a radio that is visible from the dash, and has equipment such as a CD player and controls to change the volume and radio stations.

vehicle, and the dog alerted on the partially open front driver's-side window. Trooper Bredsten searched the interior of the vehicle and found controlled substances in the backseat. Police eventually found Garding and arrested him.

Respondent State of Minnesota charged Garding with one count of first-degree sale of a controlled substance and one count of first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subds. 1(4), 2(a)(1) (2020). Garding moved to suppress the evidence against him, and the district court denied his motion. Garding waived a jury trial and proceeded with a stipulated-evidence trial under the procedures described in Minn. R. Crim. P. 26.01, subd. 4. Garding agreed that the issues preserved for appeal were "the constitutional issues argued at the contested omnibus hearing." (Emphasis omitted.) The district court found Garding guilty of first-degree possession of a controlled substance, entered judgment of conviction for that offense, and sentenced him to 105 months' imprisonment.

Garding appeals.

DECISION

Garding argues that the evidence discovered as a result of the drug-dog sniff of the vehicle should be suppressed because Trooper Bredsten did not have reasonable, articulable suspicion based on objective facts to infer that drugs may be present in the vehicle. We agree.[2]

[2] Garding also argues that Trooper Bredsten unlawfully seized him when Trooper Bredsten seized the passenger, and therefore, the evidence discovered in his vehicle should be suppressed as the fruit of that illegal seizure. Evidence obtained through an illegal seizure must be suppressed. *State v. Harris*, 590 N.W.2d 90, 97 (Minn. 1999). "[E]vidence

"When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). "We may independently review facts that are not in dispute, and determine, as a matter of law, whether the evidence need be suppressed." *Id.* (quotation omitted).

Both the United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Searches and seizures conducted without warrants are presumptively unreasonable." *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016).

Specific constitutional requirements accompany the use of a drug dog. The supreme court has determined that the level of suspicion necessary to conduct a drug-dog sniff is reasonable suspicion. *State v. Wiegand*, 645 N.W.2d 125, 134-35 (Minn. 2002). "Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate at the omnibus hearing that he or she had a particularized and objective basis for suspecting [a] person of criminal activity." *State v. Diede*, 795 N.W.2d 836, 842-

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discovered by exploiting previous illegal conduct" is inadmissible "fruit of the poisonous tree." *State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001) (quoting *Wong Sun v. United States*, 371 U.S. 471, 488 (1963)), *rev. denied* (Minn. Dec. 11, 2001). But the evidence may be admissible if it was obtained "by means sufficiently distinguishable to be purged of the primary taint." *Id.* (quotation omitted). Assuming without deciding that Garding was unlawfully seized, the record shows that Trooper Bredsten did not discover contraband by exploiting Garding's seizure. Instead, the contraband was discovered as a result of the drug-dog sniff of the vehicle, which was not based on circumstances derived from Garding's seizure. Thus, the discovery of contraband was not the fruit of an illegal seizure, and we do not address Garding's seizure argument.

43 (Minn. 2011) (quotation omitted); *see also Lugo*, 887 N.W.2d at 486 (reviewing lawfulness of a drug-dog sniff and stating that reasonable suspicion is "a particularized and objective basis for suspecting the particular person stopped of criminal activity" (quotation omitted)).

Further, the supreme court has held that to conduct a drug-dog sniff of the exterior of a motor vehicle, police must have "a reasonable, articulable suspicion of *drug-related* criminal activity." *Wiegand*, 645 N.W.2d at 137 (emphasis added). Such suspicion necessarily requires some objective, articulable basis suggesting that drugs *presently* may be in the place to be searched, and law enforcement must be "able to articulate reasonable grounds for believing that drugs may be present in the place they seek" to search. *State v. Carter*, 697 N.W.2d 199, 212 (Minn. 2005) (quotation omitted).

This requirement is evident from the supreme court's emphasis that in order to conduct a drug-dog sniff of a particular place, law enforcement must have a reasonable, articulable basis to suspect that the place to be searched contains drug-related contraband. In *Wiegand*, the supreme court "construe[d] the reasonableness requirement of the Fourth Amendment and Article I, section 10 of the Minnesota Constitution" as "limit[ing] the scope of a *Terry* investigation to that which occasioned the stop" and "to the investigation of only those additional offenses for which the officer develops a reasonable, articulable suspicion within the time necessary to resolve the originally-suspected offense." 645 N.W.2d at 136 (referencing *Terry v. Ohio*, 392 U.S. 1 (1968)). The supreme court concluded that the officer had not developed the requisite reasonable, articulable suspicion of drug-related criminal activity to expand the investigation to conduct a drug-dog sniff.

Id. at 137. In reaching this conclusion, the supreme court explained that the officer "did not conclude at the point that he determined to retrieve his dog that the driver was under the influence of anything" and the officer "indicated no reason to suspect drug-related activity." *Id.* at 137. The supreme court "stress[ed] that the officer testified he did not suspect appellants were under the influence of anything, nor did he have any indication that they were transporting drugs." *Id.* at 136. Similarly, in *State v. Burbach*, the supreme court concluded that nervous behavior, an unsubstantiated tip, and speeding, *without* signs that the driver was currently impaired, did not establish reasonable, articulable suspicion of drug possession sufficient to allow the officer to expand the traffic stop by requesting to search the vehicle. 706 N.W.2d 484, 490-91 (Minn. 2005). This authority is consistent with the bedrock principle set forth in *Terry*, namely that the "scope of the search must be strictly tied to and justified by the circumstances which rendered its initiation permissible." *Terry*, 392 U.S. at 19 (quotation omitted); *see also Wiegand*, 645 N.W.2d at 136 (quoting *Terry*, 392 U.S. at 19).

In evaluating reasonable, articulable suspicion, we are "deferential to police officer training and experience," *State v. Britton*, 604 N.W.2d 84, 88 (Minn. 2000), and a "trained police officer is entitled to draw inferences and deductions 'that might well elude an untrained person,'" *Lugo*, 887 N.W.2d at 487 (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). But the reasonableness of an officer's suspicion is an objective inquiry even when we evaluate reasonableness in light of an officer's training and experience. *See Britton*, 604 N.W.2d at 88 ("[W]e examine whether the [officer's] suspicion was objectively reasonable."); *cf. State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011) (stating

that in determining whether there was probable cause, "the reasonableness of the officer's actions is an *objective* inquiry, even if reasonableness is evaluated in light of an officer's training and experience" (quotation omitted)). Thus, "reasonable suspicion requires something more than an unarticulated hunch" and "the officer must be able to point to something that objectively supports the suspicion at issue." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotations omitted). Significantly, the justification for the suspicion generally cannot solely be based on conduct consistent with the "activities of any multitude of innocent persons." *Harris*, 590 N.W.2d at 100-01; *see United States v. O'Neal*, 17 F.3d 239, 242 (8th Cir. 1994) ("[C]onduct typical of a broad category of innocent people provides a weak basis for suspicion." (quotation omitted)).

"An assessment of reasonable suspicion must be based on the totality of the circumstances." *Lugo*, 887 N.W.2d at 486-87 (quotation omitted). But we may consider the strength of the suspicion based on the facts independently before ultimately considering them in their totality. *See id.* at 487-88 (considering the relevance and significance of the objective facts independently before considering them in their totality); *Burbach*, 706 N.W.2d at 489-91 (concluding that police did not have reasonable suspicion of drug possession justifying a search of appellant's vehicle and stating that "[e]ach of these factors is weak evidence of drug possession, and they are also weak in the aggregate"); *cf. State v. Flowers*, 734 N.W.2d 239, 253 (Minn. 2007) (noting that "while the officers had their suspicions, the strength of their suspicions was not great").

Accordingly, in conducting a drug-dog sniff, reasonable, articulable suspicion of drug-related criminal activity requires that the objective facts establish a reasonable basis

to infer that drugs may be present in the place that law enforcement seeks to search. We do not suggest that any one particular fact is necessary to satisfy this requirement. But in evaluating the totality of the circumstances, the objective, articulated facts must constitute reasonable grounds to infer that drugs may be present in the place that police seek to search before conducting a drug-dog sniff. Evidence that is merely consistent with a generalized suspicion of possible criminal activity is not the reasonable, articulable suspicion of drug-related criminal activity required to conduct a drug-dog sniff. *See Carter*, 697 N.W.2d at 212 (addressing drug-dog sniff of storage locker).

Applying these principles, we consider whether the drug-dog sniff was justified by reasonable, articulable suspicion of present, drug-related criminal activity. The state asserts that the totality of the following circumstances suggest that the vehicle may have contained drugs: (1) the vehicle was registered to a third-party owner; (2) after Trooper Bredsten drove by the vehicle, Garding exited and began to clean the vehicle; (3) the passenger went into the gas station without a purse or wallet and returned without appearing to have purchased anything; (4) when Trooper Bredsten approached the vehicle on foot, Garding put a bag of trash in the trunk and walked into the gas station; (5) Garding and the passenger had traveled from the Twin Cities; (6) both Garding and the passenger had outstanding arrest warrants; (7) Garding had left the gas station and headed in the direction of the woods; (8) the passenger's physical appearance; (9) the passenger's differing explanations for her scabbed marks; (10) the bag with a rocky appearance in the back seat; and (11) the loose paneling in the car radio area. At oral argument, the state acknowledged that none of these circumstances, on their own, establish the necessary

reasonable, articulable suspicion to conduct the drug-dog sniff. We agree, and also conclude that these circumstances in their totality, although generally suspicious, do not give rise to reasonable, articulable suspicion that illegal drugs were then in the vehicle—a necessary requirement to conduct a drug-dog sniff.

To the extent that some of these circumstances are "consistent with the activities of any multitude of innocent persons" or merely consistent with a general aura of potential or general criminality, they are insufficient to establish a reasonable, articulable suspicion of present, *drug-related* criminal activity. *See Harris*, 590 N.W.2d at 95, 100-01 (concluding that police did not have reasonable suspicion of drug possession where an officer testified he observed conduct that, in his training, was consistent with drug-courier "counter surveillance activities," but the activities "could be consistent with the activities of any multitude of innocent persons" and the police "did not provide any facts sufficient to distinguish [appellant] from innocent passengers in the depot"); *Wiegand*, 645 N.W.2d at 128, 136-37 (concluding officer lacked reasonable, articulable suspicion of drug-related criminal activity to justify drug-dog sniff, despite testimony that appellant was "evasive, nervous and had glossy eyes," because officer did not conclude that defendant was under the influence of any *drugs* or indicate a reason to suspect *drug-related* activity); *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003) (concluding that officer did not have reasonable, articulable suspicion supporting investigation for presence of narcotics when stop was in a "'high drug' area," but "the officer never said he suspected any crime other than the traffic violations" and the purpose of the stop was to process the traffic violations).

We give little weight to the fact that it appeared to Trooper Bredsten that the vehicle was registered to someone other than Garding. Trooper Bredsten testified that in his experience, "a person involved in criminal behavior, criminal activity" will drive a third-party vehicle, which he also described as "evasive" conduct. Even construing this fact as indicative of a possibility of general criminal activity, there is no evidence in the record that this fact could form an objective basis to infer that illegal drugs were currently in the vehicle. *See Diede*, 795 N.W.2d at 845 ("Even if [in the officer's experience] mismatched plates supported a reasonable suspicion that the truck was stolen or that the owner was attempting to evade automobile registration fees, a search for drugs was not reasonably related to those justifications.").

Regarding Trooper Bredsten's observations of Garding cleaning the car, Trooper Bredsten testified that, after he drove by, Garding "immediately" got out of the vehicle and started to clean. Trooper Bredsten testified that, in his experience, this is a "delaying or stalling" tactic. But this behavior does not reasonably suggest drug-related criminal activity or that drugs may be present in the place Trooper Bredsten sought to search. *See Carter*, 697 N.W.2d at 212; *State v. Benavides*, No. A16-1677, 2017 WL 1375339, at *2-6 (Minn. App. Apr. 17, 2017) (concluding that law enforcement did not have reasonable, articulable suspicion that defendant was engaged in drug-related criminal activity to justify a drug-dog sniff where the district court did not find that defendant was driving deliberately evasively or was unreasonably nervous, officer testified that in his experience defendant knowing a friend only by a nickname indicated a "drug related" relationship, and officer knew defendant had previously been involved in drug-related activity), *rev. denied* (Minn.

June 28, 2017).[3] Trooper Bredsten did not testify that, in his experience, delaying or stalling is indicative of drug-related criminal activity.[4] Rather, he testified only to his perception that such behavior, along with the "third-party vehicle," was a "possible evasive indicator." And Trooper Bredsten affirmatively testified that he did not observe that the vehicle cleaning involved criminal drug-related items, instead conceding that he did not see any drug paraphernalia in the trash and that he was "confident" that the bag Garding placed in the trunk was, in fact, garbage.

We give little to no weight to the fact that the passenger entered and exited the gas station without a purse and without making a purchase because this behavior is entirely consistent with use of a restroom inside a gas station. The record provides no objective basis to infer otherwise. Trooper Bredsten did not testify about any inference or suspicion of present, drug-related criminal activity based on his training or experience regarding these actions by the passenger.

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[3] We cite nonprecedential opinions for their persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

[4] We note that there is no evidence that Garding saw or made eye contact with Trooper Bredsten or was otherwise "delaying or stalling" because of Trooper Bredsten's presence before Trooper Bredsten approached. *Cf. State v. Johnson*, 444 N.W.2d 824, 825, 827 (Minn. 1989) (concluding trooper had reasonable suspicion to stop defendant's vehicle when defendant made eye contact with the trooper and engaged in "evasive" driving by immediately turning off the highway and returning within a minute). Even so, we note that the district court did not make a finding that Garding attempted to delay or stall anything, and the video recording of this interaction objectively shows that Garding was not delaying or stalling. Garding was cleaning his car and continued to do so after Trooper Bredsten approached. Garding also directly answered all of Trooper Bredsten's questions.

That Garding walked away from Trooper Bredsten is likewise innocuous. Trooper Bredsten testified that when he approached Garding at the vehicle, Garding "walk[ed] back" while responding to Trooper Bredsten's questions and ultimately walked into the gas station. Trooper Bredsten testified that Garding "back[ing] away" indicated "an evasiveness to my presence" and that "he didn't want to be talking to me." But Garding's choice to back away and walk into the gas station after responding to all of Trooper Bredsten's questions or Garding's desire not to further interact with law enforcement are not objectively reasonable bases to suspect that Garding or his vehicle were involved with present, *drug-related* criminal activity. *See State v. Miller*, 659 N.W.2d 275, 279-80 (Minn. App. 2003) (recognizing an individual has the right not to speak with police and concluding that police did not have reasonable, articulable suspicion of drug-related criminal activity in part where defendant did not respond to police speaking to him), *rev. denied* (Minn. July 15, 2003). Even if Trooper Bredsten considered this behavior to be generally suspicious, we have stated that an individual "act[ing] in a manner that implied that he did not want to interact with the officers supports nothing more than a hunch, a mere whim, or a guess that [he] had violated or was about to violate some law." *State v. Davis*, 910 N.W.2d 50, 53-54 (Minn. App. 2018) (considering as a factor for reasonable, articulable suspicion that defendant had looked away from the officers and started to walk away quickly); *see also State v. Schrupp*, 625 N.W.2d 844, 848 (Minn. App. 2001) (stating that an officer's conclusion that a driver "might be trying to avoid [them]," based on facts that the vehicle was being driven by someone other than the registered owner, in different city from where the car was registered, and that the driver quickly pulled into and out of a

driveway, without an inference of possible criminal activity, did not constitute reasonable, articulable suspicion of criminal activity), *rev. denied* (Minn. July 24, 2001).

That Garding and the passenger were traveling from the Twin Cities area is also weak evidence only of a general possibility of criminal activity. Although Trooper Bredsten testified that the Twin Cities is an area of origin for "weapons" and "drug trafficking," it is also true that the Twin Cities is the most populated area of Minnesota, where many people travel without engaging in criminal behavior of any kind. This fact alone is not strong evidence of general criminal activity, let alone present, drug-related criminal activity. *See City of St. Paul v. Uber*, 450 N.W.2d 623, 628 (Minn. App. 1990) ("It may be true that Summit-University has a higher incidence of prostitution than Moundsview, but simply being on a public street in an area where one 'might' find a prostitute or drug dealer does not, *without more*, meet any constitutional standard for a stop by the authorities."), *rev. denied* (Minn. Mar. 22, 1990).

And although both the passenger and Garding had an outstanding arrest warrant, there was no evidence before the district court as to the basis for those warrants, and therefore no objective basis to suspect present, *drug-related* criminal activity based on the warrants. *Cf. Wiegand*, 645 N.W.2d at 137 (requiring reasonable, articulable suspicion of "drug-related criminal activity" to justify a drug-dog sniff). The outstanding arrest warrant is also consistent with Trooper Bredsten's testimony that by Garding leaving the gas station and going into the woods, it "looked like he was trying to hide from the situation and run away from the vehicle." While Garding's behavior is undoubtedly suspicious, the officer's

inference that Garding desired to "run away from the vehicle" does not reasonably support suspicion that the vehicle was presently involved in *drug-related* criminal activity.

Next, we consider the passenger's appearance and her explanation of her appearance. Trooper Bredsten testified that the passenger had scabbed marks on her face, bruising on her arms and legs, and poor dental hygiene. Trooper Bredsten testified about his training and experience in identifying indicators of prolonged drug use, including tooth decay and scabbed marks from picking. But he also testified as to his experience in identifying signs of *recent* drug use, such as dilated pupils, restlessness, rigid movement, rapid talking, inability to focus, and increased perspiration. Notably, Trooper Bredsten did not testify to any observation of the passenger consistent with recent drug use. Rather, he testified that her appearance was consistent with signs of "prolonged drug use" and that the marks on her face looked like they were "relatively recent" but "scabbed." These facts are not consistent with the degree of observations of recent drug use that we have typically found to be sufficient to support a reasonable, articulable suspicion of drug-related criminal activity. *Compare Wiegand*, 645 N.W.2d at 137 (holding that officer did not have reasonable, articulable suspicion of drug-related criminal activity justifying a dog sniff when officer testified that appellant was evasive, nervous, and had glossy eyes, but that he did not conclude "that [appellant] was under the influence of anything" and "indicated no reason to suspect drug-related activity"), *and Burbach*, 706 N.W.2d at 490-91 (invalidating expansion of traffic stop for speeding to include drug-dog sniff and search of vehicle for controlled substances when evidence of additional criminal activity was driver's nervous behavior, uncorroborated tip, and driving behavior, and driver exhibited no signs of

impairment), *with State v. Cox*, 807 N.W.2d 447, 449, 452 (Minn. App. 2011) (upholding expansion of stop for traffic violation to investigate whether defendant was driving under the influence when defendant demonstrated signs of intoxication and officer detected odor of alcohol), *and State v. Folkert*, No. A12-0854, 2013 WL 499764, at *1, *5 (Minn. App. Feb. 11, 2013) (concluding that police had reasonable, articulable suspicion of drug-related criminal activity justifying a dog sniff when, in part, police observed signs of possible drug use based on appellant's "fresh puncture wound in the crook of his arm," constricted pupils, droopy eyelids, shaking abdomen, sweat on nose, and the driver's "bleeding scratches on her legs" consistent with methamphetamine use).

We agree with the state that the passenger's changing explanation for her appearance may indicate an evasiveness about past drug use, but her responses do not support an inference of *current* drug use that provided Trooper Bredsten with an objective basis to form a reasonable, articulable suspicion that the vehicle presently contained drugs. *Cf. Carter*, 697 N.W.2d at 203, 212 (concluding that appellant's drug-related criminal history, police's knowledge of appellant's brother's drug-related convictions, and appellant and his brother's frequent visits to their storage units were not enough to give police reasonable suspicion of drug-related criminal activity to conduct a warrantless drug-dog sniff of the storage units); *Diede*, 795 N.W.2d at 843-45 (concluding that an officer's assertion that they had probable cause to arrest a passenger in the defendant's vehicle for previous drug sales was not enough to give reasonable suspicion that the defendant possessed drugs at the time).

Likewise, the observation of a bag with a "rocky" appearance in the back seat of the vehicle did not provide Trooper Bredsten with an objectively reasonable basis to infer that illegal drugs were in the vehicle. When asked directly, with a leading question, whether he observed that the bag appeared to contain controlled substances, Trooper Bredsten did not answer in the affirmative and instead stated that the bag looked like it contained numerous rocks. Trooper Bredsten testified to his observations of the bag:

> PROSECUTOR: What did you notice from your vantage point outside of the vehicle about the contents of the bag?
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> TROOPER BREDSTEN: It appeared kind of rocky, but I couldn't make out whatever was on the inside of it.
>
> PROSECUTOR: When you use the term "rocky," what do you mean?
>
> TROOPER BREDSTEN: Like rocks, like the consistency of it.
>
> PROSECUTOR: Like controlled substance rocks?
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> TROOPER BREDSTEN: Well, like, yeah, I mean, like, rocks, or, like, you know, it could be—when you see meth, when it's in a large amount, it breaks up like rocks and it'll look like rocks from the outside within the bag.
>
> PROSECUTOR: From your vantage point, what was in the bag, did it appear to be consistent with controlled substances?
>
> TROOPER BREDSTEN: The shape, the way that the contents of the bag were pushing out, it looked rocky. It looked like there were numerous rocks on the inside.

In light of this testimony, the district court's finding that Trooper Bredsten, "[f]rom his training and experience," "believed [the rocky shape] could be a large amount of controlled substances" is clearly erroneous. *See Gauster*, 752 N.W.2d at 502. The only objective

evidence in the record as to the condition of the bag is Trooper Bredsten's testimony. That testimony establishes that Trooper Bredsten observed a bag that appeared to contain numerous rocks. There is no testimony or other objective evidence in the record that the bag Trooper Bredsten observed appeared to contain illegal drugs or appeared consistent with controlled substances. Indeed, Trooper Bredsten's own testimony precludes such an inference because when asked if the rocky bag "appear[ed] to be consistent with controlled substances," Trooper Bredsten did not answer affirmatively and instead consistently described the appearance of the bag only as "rocky."

Trooper Bredsten offered no testimony that he reasonably inferred, based on his training and experience, that the rocky appearance of *this* bag was consistent with controlled substances or present, drug-related criminal activity. Instead, Trooper Bredsten agreed that he was not "certain as to what was in that bag." Ultimately, we must determine whether the trooper's suspicion was "reasonably inferable from what he did see." *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732-33 (Minn. 1985). Because there was no evidence before the district court that the appearance of the bag that Trooper Bredsten saw was consistent with controlled substances, and Trooper Bredsten described the bag only as "rocky," we conclude that the facts in this record do not objectively support a reasonable inference that drugs were presently in the vehicle.

Finally, we are not persuaded that Trooper Bredsten's observation of loose paneling around the radio formed an objectively reasonable basis to infer that the vehicle contained drugs. Trooper Bredsten testified generally that he has, in the past, "found some quantities of meth and paraphernalia and other drugs that have been stashed behind a radio." While

"[w]e are deferential to police officer training and experience and recognize that a trained officer can properly act on suspicion that would elude an untrained eye," we must "examine whether the suspicion was objectively reasonable." *Britton*, 604 N.W.2d at 88-89. This may include consideration of whether the record indicates that law enforcement made "an assessment based on training or experience that this particular" circumstance supported reasonable, articulable suspicion of criminal activity. *Id.* at 89.

Here, Trooper Bredsten only provided a general description of the paneling as "loose." But he did not testify that, in his experience, the existence of "loose" paneling was indicative of the presence of illegal drugs, and he did not testify to any objective fact to indicate that the particular condition of the paneling in *this vehicle* would afford him a reasonable basis to infer that drugs might be presently stored in the vehicle. *See id.* at 86, 88-89 (concluding that police did not have reasonable suspicion of criminal activity to justify a stop where officer had testified that in his experience a broken window is an indication a vehicle may have been stolen, or was involved in a theft, and he had been involved in recovering 10 to 20 stolen cars with broken windows, but the record did not indicate that there was an assessment of whether "this particular broken window indicated that the vehicle was stolen"). Trooper Bredsten did not observe or identify any other facts about the condition of the vehicle that suggested current drug use or drug trafficking, either objectively or based on his training and experience. *See Lugo*, 887 N.W.2d at 479-80, 487 (agreeing with the district court's determination that the lived-in appearance of the vehicle and removal of the center console molding with "'plastic pieces'" appearing "'messed with'" were not indicative of drug-related activity where the record did not include

"'visible signs'" in the vehicle "of drug use or drug trafficking"). Trooper Bredsten also observed radio heads in the back seat of the vehicle that he agreed were the type of equipment that could be used to replace a stereo, which would provide an innocent explanation for the loose paneling around the radio. *See Britton*, 604 N.W.2d at 88 (considering whether the record contained an indication as to why officer's experience supported that a particular observation indicated current criminal activity when there were also innocent explanations for the observation). Thus, the condition of the paneling around the radio does not provide reasonable support to infer present, drug-related criminal activity. *See Lugo*, 887 N.W.2d at 479, 487 (stating that on the record before the supreme court, "the removal of the vehicle's center console [was] not indicative of drug-related activity" justifying a drug-dog sniff despite officer observations that "the vehicle's center console molding had been removed" and "'messed with,'" and that was an "'indicator[] of illegal drug trafficking'").[5]

[5] To the extent that *Lugo* ultimately concluded that the officer had reasonable, articulable suspicion of present, drug-related criminal activity to justify a drug-dog sniff, we note that unlike here, the totality of the circumstances in *Lugo* included significant *additional* circumstances supporting a reasonable inference that the vehicle presently contained drugs or was presently being used for drug trafficking. *See* 887 N.W.2d at 487 (concluding the officer had reasonable, articulable suspicion to conduct a drug-dog sniff based on appellant's presence at house "known to be connected with controlled substances and that was under active surveillance," appellant taking an unusually long time to stop his vehicle and furtive movements as if trying to hide something after he stopped, officer's awareness of appellant's recent arrest for drug possession, appellant lying about the identity of the car owner and the actual owner having "previously been arrested for a drug crime and drug paraphernalia [having] been found in that vehicle," and appellant stating "'man just take me to jail, please'").

We emphasize that this is a close case. Generally, to show reasonable, articulable suspicion in cases like these, the officer sets forth the factual predicate for an intrusion and may describe the inferences drawn from those facts based upon their training and experience. Our review of the record then generally involves deference to the officer's training and experience and an evaluation of the record to determine whether the officer's inferences and suspicions are reasonably drawn from the objective facts. *See Britton*, 604 N.W.2d at 86, 88 (accepting the officer's suspicion based on his experience as true and stating we must still "examine whether the suspicion was objectively reasonable"); *Lugo*, 887 N.W.2d at 479-80, 487 (concluding appearance of vehicle's interior was not indicative of drug-related activity despite officer's testimony that, in his experience, the fact that the center-console molding had been removed and plastic pieces had been "'messed with'" was indicative of drug trafficking because the record did not include "visible signs" of drug use or drug trafficking in the vehicle and lacked testimony about why a vehicle's messy interior was indicative of drug trafficking). While an officer is entitled to draw inferences that might be reasonably based on the officer's training and experience, *Lugo*, 887 N.W.2d at 487, the "ultimate determinative issue" of our review is whether the officer's suspicion "was reasonably inferable from what he did see," *Berge*, 374 N.W.2d at 733. *See Britton*, 604 N.W.2d at 89 (concluding a stop to investigate a stolen vehicle, justified by a broken window, was not supported by reasonable suspicion where the record did not show "an assessment based on training or experience that this particular broken window indicated that the vehicle was stolen," and the record did not otherwise objectively support reasonable suspicion).

It could be that a different record with facts similar to those in this case may give rise to a reasonable, articulable suspicion of present, drug-related criminal activity. But our review of *this* specific record and the circumstances in *this* case demonstrates that each identified fact is independently weak and does little to substantiate an objectively reasonable basis to infer that illegal drugs were in the vehicle. The circumstances are also insufficient in their totality to constitute reasonable, articulable suspicion of present, drug-related criminal activity. *Burbach*, 706 N.W.2d at 490. While some facts may be consistent with Trooper Bredsten's experience generally with drug users or traffickers, these facts, without more, do not form an objective basis to reasonably suspect that drugs were currently in the vehicle. *See Wiegand*, 645 N.W.2d at 136 ("We stress that the officer testified he did not suspect appellants were under the influence of anything, nor did he have any indication that they were transporting drugs."). And the remaining circumstances, though potentially indicative of *some general* criminal activity, do not provide an objectively reasonable basis to infer that the vehicle presently contained drugs. *See Lugo*, 887 N.W.2d at 487 (declining to consider in the totality of the circumstances facts that "were not indicative of drug-related activity" when reviewing reasonable suspicion for a drug-dog sniff). Any suggestion that indicia of general criminality is sufficient to support a drug-dog sniff is the equivalent of authorizing a drug-dog sniff based on an officer's hunch. Such a search is plainly illegal. *Davis*, 732 N.W.2d at 182 (stating that reasonable suspicion "requires something more than an unarticulated hunch" (quotation omitted)).

We therefore conclude that Trooper Bredsten lacked the required reasonable, articulable suspicion of drug-related criminal activity to justify the drug-dog sniff of the

exterior of the vehicle because the record lacks an objective basis from which an officer could reasonably infer that drugs may be present in the place he sought to search.[6]

Reversed.

[6] Garding also argues that the drug dog's positive alert did not provide probable cause to search the interior of the vehicle because the drug dog could alert to marijuana and possession of marijuana is no longer illegal in all circumstances. In light of our disposition, we do not reach this issue.